IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 339 OF 2005
In
SPECIAL CIVIL APPLICATION NO. 8995 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAFARKHAN NASRULLA KHAN - Appellant(s)
Versus
SUN METALS INDUSTRIES – Respondent (s)

==========

Appearance :
MR. T.R. MISHRA for Appellant.
RULE SERVED for Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/08/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The appellant is before this Court throwing a challenge to

the Order dated 26th July, 2004 passed in Special Civil Application No.8995 of 2004 whereunder the award made by the Labour Court No.6, Ahmedabad on 16th January, 2002 was confirmed.

2. Mr.Mishra, learned Counsel for the appellant, submits that the Labour Court was absolutely unjustified in recording a finding that the petitioner could not prove that he had worked for 240 days. His submission is that the burden to prove that the labour did not work for 240 days was upon the Establishment and as the Establishment did not prove the fact, the submission of the petitioner ought to have been accepted.

3. When both the parties had led evidence, the question of burden of proof looses its importance. The basic burden to prove a particular fact is on the party who alleges the fact. In the present case, the petitioner miserably failed in proving that he had worked for 240 days. If the statement of the workman is not reliable, then, the other party is not required to disprove a fact, which has yet not been proved. The learned single Judge has also observed that the petitioner has miserably failed in proving the fact that he had worked for 240 days. If the foundation necessary for grant of the relief is not available, then, no relief can be granted to the claimant. We find no reason to interfere. The appeal is

dismissed. Rule is discharged.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.]***

*kamlesh**